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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

BETH ELAINE DAVIS,

Defendant and Appellant.

G040034

(Super. Ct. No. 07SF0789)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, H.

Warren Siegel, Judge. Affirmed.

Harry Zimmerman, under appointment by the Court of Appeal, for
Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Gary W. Schons, Assistant Attorney General, Jeffrey J. Koch and
Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury found defendant Beth Elaine Davis guilty of theft. (Pen. Code, §§ 484, 666; all statutory references are to the Penal Code.) She contends the trial court abused its discretion when it refused to strike her 1996 robbery conviction, which the court used to double her sentence under the Three Strikes law. For the reasons expressed below, we affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

On the afternoon of June 27, 2007, defendant placed several items in her purse and walked out of a San Clemente surf wear store. The store manager stopped defendant and asked her to pay for the merchandise. A tug-of-war ensued over defendant's purse. The manager recovered the purloined items, including a beach tote bag, a pair of shorts, and a camisole with a combined retail value of \$95.36. Defendant's wallet, containing her driver's license, social security card, bank debit card, but no money, fell from her purse during the struggle. Defendant unsuccessfully attempted to retrieve her wallet, and then apologized for her actions and promised she would never do it again. When the manager said she was calling the police, defendant fled the store without the wallet. The manager and a sales clerk identified defendant at the scene from her driver's license photo, and the manager identified her in court.

Defendant argued the eyewitnesses misidentified her as the thief. In support, she pointed to the differences in the clerk's description of the thief's hair from defendant's appearance, the thief's failure to retrieve the wallet, and the sales clerk's uncertain identification of another woman during a defense photo lineup conducted shortly before trial.

Following a trial in January 2008, the jury found defendant guilty of theft, but acquitted her of second degree burglary. The parties had agreed to bifurcate the allegation defendant had suffered a prior strike conviction, and the trial court found

defendant previously had been convicted of robbery. In March 2007, the court imposed a midterm sentence of two years in prison, doubled under the Three Strikes law for a total term of four years.

II

DISCUSSION

The Trial Court Did Not Abuse Its Discretion by Declining to Strike Defendant's Prior Conviction

Defendant contends the trial court abused its discretion when it failed to strike her 1996 robbery conviction. She asserts the nature and circumstances of her current and prior felony convictions, and the mitigating circumstances of her background, particularly her problems with alcohol and mental illness, warranted striking the prior conviction. She complains the court “mistakenly” failed to consider her mental health issues, and erred by focusing at the sentencing hearing on her failure to admit guilt.

In *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, the court concluded section 1385, subdivision (a), permits a trial court to exercise its discretion and strike a prior felony conviction in the interests of justice. A trial court's discretion to strike a prior conviction in furtherance of justice is limited, however. Courts may not dismiss prior convictions solely to accommodate judicial convenience or relieve court congestion. Nor may the court strike a prior solely in exchange for a guilty plea, or because the court dislikes the lengthy sentence a defendant must serve under the Three Strikes law. (*Romero*, at p. 530.) The standard for ruling on a *Romero* motion, and for our review, is “whether, in light of the nature and circumstances of [a defendant's] present felonies and prior serious and/or violent felony convictions, and the particulars of [her] background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though [she] had not previously been convicted of one or more serious and/or violent felonies.” (*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*).) The standard is “deferential,” not de

novo; the issue whether the trial court's decision "'falls outside the bounds of reason.'" (*Id.* at p. 162.)

Here, the record reflects the trial court exercised its sentencing discretion within the parameters established in *Williams*. The probation report described defendant's prior convictions dating back to 1989. These included a felony offense for possession of cocaine, three separate petty theft convictions, two separate misdemeanor burglary convictions, disorderly conduct, resisting arrest, and trespass. Defendant's 1996 robbery occurred when she threatened a restaurant employee with a knife and took cash from the register. Defendant admitted to investigators she committed the crime because she needed the money to pay a debt to her drug dealer. Defendant continued to reoffend after serving a two-year prison sentence for robbery, including a misdemeanor conviction for interfering with an officer in the performance of her duties. During defendant's pretrial incarceration, jail officials cited her for 10 infractions. Based on the foregoing, the trial court reasonably could conclude defendant's background, character, and prospects did not place her outside the purposes of the Three Strikes law.

Defendant complains the trial court failed to consider the nonviolent nature of her offense, the remoteness of her strike conviction, her diagnosis for bipolar disorder and depression, and her alcohol and drug addictions. We disagree. The probation report described in detail defendant's background, including her difficult childhood at the hands of an abusive mother, her alcoholism and drug abuse leading to sporadic employment, and her mental health issues. Before sentencing defendant, the trial court announced it had read and considered the probation report. Defense counsel raised defendant's mental problems at the hearing to prove the prior conviction, and the parties had discussed defendant's mental health issues informally in chambers. The court stated "it would be important to know about the background and issues and current treatment status and so on" and persuaded defendant to delay the sentencing hearing so the court could obtain "a full probation report . . . where all of these issues can be discussed including health care

questions.” Counsel raised defendant’s mental health issues again at the sentencing hearing, and noted they had attempted to place defendant in a mental health program, but her prior robbery conviction disqualified her from participating.

Defendant’s real complaint is with the trial court’s decision not to strike her prior robbery conviction. But none of defendant’s mitigating circumstances required the court to strike the prior. For example, her emphasis on the remoteness of the conviction is undermined by numerous misdemeanor convictions she suffered after her release from prison. Although defendant has been treated for substance abuse, subsequent relapses suggest her prospects for recovery were not promising. Finally, most of the information concerning defendant’s mental illness came from defendant herself, and her failure to present the trial court with medical records confirming her claim of bipolar disorder and other mental health issues further weakened her argument the court should strike her prior.

Nor did the trial court err by focusing on defendant’s denials “she was even at the scene” even though “the jury had more than sufficient evidence to determine . . . that she was there.” Defendant told the probation officer she left her wallet at a friend’s house and the friend used it, and she pressed the point when she spoke at the sentencing hearing. The court’s sentence did not indicate it was punishing her for failing to become a “fraudulent penitent for [her] own advantage.” (*Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 744.) Rather, given the overwhelming evidence against her, the court may have reasonably concluded defendant’s denials reflected poorly on her character and prospects. (*People v. Leung* (1992) 5 Cal.App.4th 482, 507-508; *Williams, supra*, 17 Cal.4th at p. 161.)

III

DISPOSITION

The judgment of the trial court is affirmed.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

O'LEARY, J.